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7
8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

10 UNITED STATES OF AMERICA,
11 Plaintiff,
12 vs.
13 LINDA LIVOLSI,
14 Defendant.

2:10-cr-578-PMP-GWF

MOTION TO DISMISS COUNTS
THREE THRU EIGHT OF THE
SUPERSEDING INDICMTENT FOR
VIOLATION OF 26 U.S.C. § 6531

15 COMES NOW, LINDA LIVOLSI (Ms. Livolsi), by and through her attorney of record
16 Monique Kirtley, Assistant Federal Public Defender, pursuant to the provisions 26 U.S.C. § 6531
17 hereby request an ORDER dismissing counts three through eight of the superseding indictment with
18 prejudice as a result of the government's failure to bring counts three through eight within the time
19 period set forth in 26 U.S.C. § 6531.

20 DATED this 25th day of July, 2014.

21 Respectfully submitted,

22 RENE L. VALLADARES
23 Federal Public Defender

24 /s/ Monique N. Kirtley
25 By: _____
26 MONIQUE N. KIRTLEY,
Assistant Federal Public Defender
27 Counsel for Linda Livolsi
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POINTS AND AUTHORITIES OF LAW

I. RELEVANT STATEMENT OF FACTS

On December 01, 2010, the government filed a two count indictment alleging Conspiracy to Commit Wire Fraud, in violation of 18 U.S.C. § 1349 (count one) and Wire Fraud, in violation of 18 U.S.C. § 1343 (count two). On January 01, 2014, the government filed a superseding indictment alleging six additional counts and Mr. Livolsi as a co-defendant.

In the superseding indictment the government alleged, in counts four through six, that Ms. Livolsi filed False and Fraudulent Tax Returns for the years 2003 (count 3), 2004 (count 4), 2005 (count 5), and 2006 (count 6), all in violation of 26 U.S.C. § 7206(1). The government alleges that Ms. Livolsi filed her 2003, 2004, 2005 and 2006 tax returns in 2007. Additionally, in counts seven and eight, the government alleges that Ms. Livolsi Failed to File Tax Returns for tax years 2007 (count 7) and 2008 (count 8), in violation of 26 U.S.C. § 7203.

Ms. Livolsi submits that counts four through eight broaden the charges, as alleged in the first indictment. The original indictment does not contain any factual allegations that Ms. Livolsi either failed to file or filed false tax returns. Ms. Livolsi now moves this court for a dismissal of counts four through eight pursuant to 26 U.S.C. § 6531 (Statute of Limitations).

II. ARGUMENT

A. Counts Four Through Eight Fall Outside the Six-Year Statute of Limitations and Should Be Dismissed Pursuant to 26 U.S.C. § 6531

Generally, once an indictment is returned the statute of limitations is tolled as to the charges contained in the indictment. A superseding indictment returned while the first indictment is pending is timely unless it “broadens or substantially amends the charges in the original indictment. *See United States v. Sears, Roebuck & Co., Inc.*, 785 F.2d 777, 778 (9th Cir. 1986), *United States v. Pacheco*, 912 F.2d 297 (9th Cir. 1990). Here, as noted above the superseding indictment broadens and substantially amends the allegations in the original indictment. In the original indictment Ms. Livolsi is only charged with Conspiracy to Commit Wire Fraud (count 1) and Wire Fraud (count 2). The elements and defenses for counts one and two substantially different then for counts four through eight. The government did not file the superseding indictment until January 7, 2014. This

1 is seven years past the six year statute of limitations pursuant to 26 U.S.C. § 6531. *See* 26 U.S.C.
2 § 6531 (2014).

3 The government's seven year delay in indicting counts three through eight is clearly in
4 violation of 26 U.S.C. § 6531. Therefore, Ms. Livolsi respectfully requests that this Court grant her
5 motion to dismiss counts three through seven.

6 DATED this 25th day of July, 2014.

7 Respectfully submitted,

8 RENE VALLADARES
Federal Public Defender

9 */s/ Monique N. Kirtley*

10 By: _____
11 MONIQUE KIRTLEY
Assistant Federal Public Defender
12 Counsel for Linda Livolsi
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CERTIFICATE OF ELECTRONIC SERVICE

The undersigned hereby certifies that she is an employee of the Federal Public Defender for the District of Nevada and is a person of such age and discretion as to be competent to serve papers.

That on July 25, 2014, she served an electronic copy of the above and foregoing **MOTION TO DISMISS COUNTS THREE THRU EIGHT OF THE SUPERSEDING INDICMTENT FOR VIOLATION OF 26 U.S.C. § 6531**, by electronic service (ECF) to the person named below:

DANIEL G. BOGDEN
United States Attorney
J. GREGORY DAMM
Assistant United States Attorney
333 Las Vegas Blvd. So., 5th Floor
Las Vegas, Nevada 89101

/s/Maribel Bran

Employee of the Federal Public Defender